primary particles 10, 13 and 12, which had an average diameter of 10 nm or less. The primary particles 10 were composed of Al_2O_3. The primary particles 13 were composed of CeO_2-ZrO_2. The primary particles 12 were composed of an Al_2O_3-La_2O_3 composite oxide. As illustrated in Fig. 1, the primary particles 13 were distributed more in the inner portion of the agglomerated particles 1. The primary particles 12 were distributed more in the surface side of the agglomerated particles 1. The Al_2O_3 primary particles 10 were also distributed in the inner portion.

IN THE CLAIMS

Please amend the claims as follows:

1. (Amended) A composite oxide, comprising: agglomerated particles, each agglomerated particle comprising a plurality of fine particles, the agglomerated particles having an average particle diameter of 20 μm or less and the fine particles having an average diameter of 50 nm or less, wherein the plurality of fine particles comprises oxides of a plurality of metallic elements, and each fine particle independently comprises an oxide of one or more of said metallic elements, said agglomerated particles having a surface and an inner portion whose metallic element distributions differ with each other.

3. (Amended) The composite oxide according to claim 2, wherein Ce is present as CeO_2 and Zr is present as ZrO_2, and at least a part of CeO_2 and ZrO_2 form a solid solution.

5. (Amended) The composite oxide according to claim 4, wherein Zr is present as ZrO_2 and Ti is present as TiO_2, and at least a part of ZrO_2 and TiO_2 form a solid solution.

9. (Amended) The composite oxide according to claim 8, wherein Y is present as Y_2O_3, Ce is present as CeO_2, and Zr is present as ZrO_2, and a solving ratio of Y_2O_3 in CeO_2 is 10 mol% or less, and a solving ratio of Y_2O_3 in ZrO_2 is 90 mol% or more.

10. (Amended) The composite oxide according to claim 8, wherein Al is present as Al_2O_3, and said agglomerated particles further comprise a rare-earth element oxide, excepting Y_2O_3, and the rare-earth element oxide is solved in Al_2O_3 in an amount of 70 mol% or more.

13. (Amended) A composite oxide, comprising:

agglomerated particles having an average particle diameter of 20 μm or less, in which first oxide-phase fine particles having an average diameter of 50 nm or less, and second oxide-phase fine particles being different from the first oxide-phase fine particles and having an average particle diameter of 50 nm or less, are agglomerated,

said first oxide-phase forming a crystal having an aspect ratio of 30 or less and being highly dispersed with each other and with said second-phase fine particles to constitute said agglomerated particles, said agglomerated particles having a surface and an inner portion whose metallic element distributions differ with each other.

15. (Amended) A composite oxide, comprising:

agglomerated particles having an average particle diameter of 20 μm or less, in which first oxide-phase fine particles having an average diameter of 100 nm or less, and second oxide-phase fine particles being different from the first oxide-phase fine particles and having an average particle diameter of 30 nm or less, are agglomerated,

said first oxide-phase fine particles having pores between the fine particles, in the pores which a major part of said second oxide-phase fine particles are dispersed, the pores having a median pore diameter of from 5 to 20 nm, 50% or more of all the pores falling in a range of ± 2 nm of the median diameter, said agglomerated particles having a surface and an inner portion whose metallic element distributions differ with each other.

22. (Amended) A catalyst for purifying an exhaust gas, comprising: a catalytic ingredient being loaded on the composite oxide set forth in claim 1.

23. (Amended) A catalyst for purifying an exhaust gas, comprising: a catalytic ingredient being loaded on the composite oxide set forth in claim 13.

24. (Amended) A catalyst for purifying an exhaust gas, comprising: a catalytic ingredient being loaded on the composite oxide set forth in claim 15.

25. (Amended) A catalyst for purifying an exhaust gas, comprising: a catalytic ingredient being loaded on the composite oxide set forth in claim 16.

26. (Amended) A catalyst for purifying an exhaust gas, comprising:

a support substrate;

a first catalytic layer being formed on a surface of the support substrate, and comprising a first support including the first oxide phase set forth in claim 13, and a catalytic ingredient being loaded on the first support; and

a second catalytic layer being formed on a surface of the first catalytic layer, and comprising a second support including the second oxide phase set forth in claim 13, and a catalytic ingredient being loaded on the second support;

at least one of the first support and the second support including agglomerated particles, each agglomerated particle comprising a plurality of fine particles dispersed therein, the agglomerated particles having an average particle diameter of 20 μm or less, and the fine particles having an average particle diameter of 50 nm or less, wherein the plurality of fine particles comprises oxides of a plurality of metallic elements, and each fine particle independently comprises an oxide of one or more of said metallic elements, said agglomerated particles having a surface and an inner portion whose metallic element distributions differ with each other.

27. (Amended) A catalyst for purifying an exhaust gas, comprising:

a support substrate;

a first catalytic layer being formed on a surface of the support substrate, and comprising a first support including the first oxide phase set forth in claim 15, and a catalytic ingredient being loaded on the first support; and

a second catalytic layer being formed on a surface of the first catalytic layer, and comprising a second support including the second oxide phase set forth in claim 15, and a catalytic ingredient being loaded on the second support;

at least one of the first support and the second support including agglomerated particles, each agglomerated particle comprising a plurality of fine particles dispersed therein, the agglomerated particles having an average particle diameter of 20 μm or less, and the fine particles having an average particle diameter of 50 nm or less, wherein the plurality of fine particles comprises oxides of a plurality of metallic elements, and each fine particle independently comprises an oxide of one or more of said metallic elements, said agglomerated particles having a surface and an inner portion whose metallic element distributions differ with each other.

33. (Amended) A catalyst for purifying an exhaust gas, comprising:

a support substrate;

a support layer being formed on a surface of said support substrate, and including agglomerated particles, each agglomerated particle comprising a plurality of fine particles dispersed therein, the agglomerated particles having an average particle diameter of 20 μm or less, and the fine particles having an average particle diameter of 50 nm or less, and zeolite particles, wherein the plurality of fine particles comprises oxides of a plurality of metallic elements, and each fine particle independently comprises an oxide of one or more of said metallic elements, said agglomerated particles having a surface and an inner portion whose metallic element distributions differ with each other; and

a catalytic ingredient loaded on said support layer.

34. (Amended) The catalyst for purifying an exhaust gas according to claim 33, wherein said support layer being formed as a two-layered construction includes at least a lower layer, and an upper layer being formed on a surface of the lower layer, the lower layer comprising the zeolite particles, and the upper layer comprising the agglomerated particles.

35. (Amended) The catalyst for purifying an exhaust gas according to claim 33, wherein the agglomerated particles comprise a first metallic oxide of at least one element selected from the group consisting of Al, Si and Ti, and a second metallic oxide of at least one element selected from the group consisting of Ce and Pr.

36. (Amended) The catalyst for purifying an exhaust gas according to claim 35, wherein said agglomerated particles further comprise a third metallic oxide of at least one element selected from the group consisting of La, Nd, Mg and Ca.

Please add the following new claims:

48. (New) The composite oxide according to claim 1, wherein the fine particles have an average diameter of 5 nm or more.

49. (New) The composite oxide according to claim 1, wherein the agglomerated particles have an average particle diameter of 1 μm or more.

50. (New) The composite oxide according to claim 48, wherein the agglomerated particles have an average particle diameter of 1 μm or more.

51. (New) The composite oxide according to claim 13, wherein the fine particles have an average diameter of 5 nm or more.

52. (New) The catalyst according to claim 26, wherein the fine particles have an average diameter of 5 nm or more.

53. (New) The catalyst according to claim 26, wherein the agglomerated particles have an average particle diameter of 1 μm or more.

54. (New) The catalyst according to claim 52, wherein the agglomerated particles have an average particle diameter of 1 μm or more.

55. (New) The catalyst according to claim 33, wherein the fine particles have an average diameter of 5 nm or more.

56. (New) The catalyst according to claim 33, wherein the agglomerated particles have an average particle diameter of 1 μm or more.

57. (New) The catalyst according to claim 55, wherein the agglomerated particles have an average particle diameter of 1 μm or more.

DISCUSSION OF THE AMENDMENT

The specification has been amended to conform it to Fig. 1.

Claim 1 has been amended to more clearly set forth that while the fine particles *in toto* comprise a plurality of metallic oxides, each individual fine particle may independently comprise an oxide of less than all of the metals, as supported, for example, in Example 1, described in the specification beginning in paragraph [0162], and as shown in Fig. 1. It is understood from Claim 1 as a whole that since the agglomerated particles necessarily have a non-homogeneous distribution of fine particles, the fine particles cannot be all chemically the same. Claims 3, 5, 9 and 10 have been amended to provide antecedent basis. Claim 13 has been amended by inserting --with-- and --and-- before and after, respectively, the term "each other", as supported in the specification at paragraph [0042]. Claim 13 additionally, and Claim 15, have been amended by inserting --said agglomerated particles having a surface and an inner portion whose metallic element distributions differ with each other--, as supported by

Claim 1. Claims 22-25 have each been amended to change the words "oxides" to --oxide--, and "claims" to --claim--. Claims 26, 27 and 33 have been amended to be consistent with the above-discussed amendment to Claim 1. Claims 26 and 27 additionally, and Claim 34, have been amended to recite the various layers as --comprising-- the recited particles. Finally, Claims 35 and 36 have been amended by deleting "being composed of".

New Claims 48-57 have been added, and are supported in the specification at paragraphs [0045] and [0046].

No new matter has been added by the above amendment. Claims 1-38 and 48-57 are active in the application. Claims 39-47 stand withdrawn from consideration.

ELECTION

Restriction to one of the following inventions has been required under 35 U.S.C. § 121:

I. Claims 1-38, drawn to a composite oxide agglomerated particle catalyst added to a support, classified in class 502, subclass 300.

II. Claims 39-47, drawn to a process for producing a composite oxide agglomerated particle catalyst on a support, classified in class 502 subclass 300.

An election of species requirement has also been made from among the following: Ce, Al, Zr, Y, Si, Mg and Pr.

Applicants have elected **with traverse** the invention of Group I, i.e., Claims 1-38, and species Al, Ce and Zr.

Restriction is only proper if the claims of the restricted groups are either independent or patentably distinct (MPEP §803). The burden of proof is on the Examiner to provide

reasons and/or examples, to support any conclusion in regard to patentable distinctness (MPEP §803). Applicants respectfully traverse the Restriction Requirement on the ground that the Examiner has not carried the burden of providing any material reasons and/or examples to support the conclusion that the claims of the restricted groups are patentably distinct.

The Examiner has categorized the relationship between the inventions of Groups II and I, as process of making and product made, respectively. A process of making and the product made can be shown to be distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make another and materially different product, or (2) that the product as claimed can be made by another and materially different process. MPEP 806.05 (f).

The burden is on the Examiner to provide an example(s). The Examiner's example is that the product can be produced by using the sol-gel process. This, however, appears to be no more than non-supported speculation by the Examiner. Where is the Examiner's evidence that the product of Group I could be made the processes of Group II?

The Examiner's attention is drawn to the following from MPEP §803:

> If the search and examination of an entire application can be made without serious burden, the Examiner **must** examine it on the merits, even though it includes claims to distinct or independent inventions. (emphasis added).

Search and examination of the entire application would not appear to impose a serious burden herein.

In view of the above, it is respectfully requested that the Restriction Requirement be withdrawn, and that all claims of the application be examined.